



Parliamentary Inquiry into Human Organ Trafficking and Organ Transplant Tourism

Submission to the Joint Standing Committee on
Foreign Affairs, Defence and Trade



Anti-Slavery Australia
Faculty of Law
University of Technology Sydney
PO Box 123, Broadway NSW 2007
www.antislavery.org.au

Anti-Slavery Australia welcomes the opportunity to provide submissions to the Joint Standing Committee on Foreign Affairs, Defence and Trade. Established in 2003, Anti-Slavery Australia is a research, policy and legal centre at the University of Technology Sydney with the mission to abolish human trafficking, organ trafficking, slavery and slavery-like practices such as forced labour and forced marriage in Australia. Anti-Slavery Australia provides legal advice and representation to men, women and children who have experienced human trafficking, slavery, slavery-like conditions and forced marriage in Australia.

Acknowledgements

Indika Chandrasekera, Anti-Slavery Australia

Jennifer Burn, Director, Anti-Slavery Australia, University of Technology Sydney

CONTENTS

EXECUTIVE SUMMARY	3
1. ORGAN TRAFFICKING AND TRANSPLANT TOURISM IN AUSTRALIA	5
1.1. Organ trafficking.....	5
1.2. Transplant Tourism in an Australian context	5
1.3. Commonwealth legislation	6
1.3.1. Jurisdiction	8
1.3.2. Comparable Federal offences with an overseas connection	9
1.4. State and Territory legislation	9
2. INTERNATIONAL INSTRUMENTS.....	11
2.1. Council of Europe Convention against Trafficking in Human Organs.....	11
2.2. Other relevant international instruments	13
2.2.1. The Declaration of Istanbul on Organ Trafficking and Transplant Tourism.....	13
2.2.2. WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation.....	13
2.2.3. European Parliament Directive 2010/45/EU.....	14
2.3. The role of regional partnerships and agreements.....	14
3. PREVENTATIVE MEASURES	15
3.1. Awareness	15
3.2. Education and Training	16

EXECUTIVE SUMMARY

This submission is made to the Joint Standing Committee on Foreign Affairs, Defence and Trade (**'the Committee'**) inquiry human organ trafficking and organ transplant tourism (**'the Inquiry'**). Anti-Slavery Australia is a law, policy and legal practice centre based within the Faculty of Law at the University of Technology Sydney. This submission draws upon Anti-Slavery Australia's research and publications, as well as our advocacy and legal casework experience with survivors of human trafficking, slavery and slavery-like practices in Australia.

This submission addresses the offences of organ trafficking under division 271 of the *Criminal Code Act 1995* (Cth) (**'the Criminal Code'**), and examines:

- The extraterritorial application of these offences, and
- Whether Australia should accede to the 2014 *Council of Europe Convention Against Trafficking in Human Organs*

Division 271 of the *Criminal Code Act 1995* (Cth) (**'the Criminal Code'**) contains offences related to the trafficking of a person for the removal of an organ. This submission will use the phrase "organ trafficking" or "human organ trafficking" to refer to such practices.

In addressing the terms of reference for this Inquiry, Anti-Slavery Australia makes the following recommendations for the Committee's consideration:

- 1. To strengthen the existing Criminal Code provisions, Anti-Slavery Australia recommends the introduction of a new offence of 'organ trafficking outside Australia', which would explicitly criminalise certain conduct of Australian citizens or residents overseas.**
- 2. Further research is required to address existing gaps in knowledge on organ trafficking in Australian contexts and should include:**
 - a. Research on the prevalence of organ trafficking within Australia;**
 - b. Research on the numbers of Australian citizens and residents who receive organs in overseas jurisdictions including:**
 - i. Documented or reported instances where an organ donor was exploited**
 - ii. Identification of circumstances where the absence of policies or domestic frameworks led to a risk that an organ donor was exploited.**

1. ORGAN TRAFFICKING AND TRANSPLANT TOURISM IN AUSTRALIA

1.1. ORGAN TRAFFICKING

Organ trafficking, like other forms of trafficking, slavery and slavery-like practices, is a clandestine practice, and estimates of prevalence of this practice in Australia and around the world are problematic. The difficulty in identifying cases of organ trafficking is compounded by factors that are unique to this form of abuse. In this respect, former United Nations Special Rapporteur on Trafficking in Persons, especially women and children, Joy Ngozi Ezeilo, noted that:

“Even more so than other forms of trafficking in persons, those involved in trafficking in persons for the removal of organs (including victims) have very little incentive to come forward to researchers and criminal justice authorities... Victims are also unlikely to be identified through the multitude of channels now used to identify other victims of trafficking such as those subject to forced labour... [Health-care providers] may be inhibited from sharing information with the authorities... Furthermore, definitional problems and confusion contribute to poor reporting and analysis and render comparisons between counties and between transplantation practices extremely difficult.”¹

Global figures suggest that there are approximately 118,127 ‘solid’ organ transplantations performed in a year, with around 67% of these procedures involving the transplantation of a kidney.² The World Health Organisation (‘the WHO’) estimates that approximately 5-10% of all transplantation procedures performed worldwide are conducted illegally.³ However, the statistics provided by the WHO are clearly outdated, and may not necessarily reflect current trends in organ transplantation practices.

1.2. TRANSPLANT TOURISM IN AN AUSTRALIAN CONTEXT

Transplant tourism refers to circumstances where an intended donor recipient makes a commercial arrangement to travel overseas in order to undergo a transplant procedure.⁴ This is a type of medical tourism, driven by a variety of factors including:

- A shortage of organ donors in countries of origin,
- Lengthy waiting periods for patients seeking transplants; and
- The relative ease with which individuals can travel overseas.

¹ Joy Ngozi Ezeilo, *Report of the Special Rapporteur on Trafficking in Persons Especially Women and Children*, UN Doc A/68/256 (2 August 2013) 6 [22].

² *UN Assessment Toolkit - Trafficking in Persons for the purpose of organ removal* (2015) 7 <https://www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf>.

³ Y. Shimazono, ‘Mapping Transplant Tourism’ (2007) *World Health Organizations Second Global Consultation on Human Transplantation*.

⁴ Attorney General’s Department (Cth), *Organ Trafficking – Fact sheet for medical professionals* (online) 1 <<https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Organ-Trafficking-fact-sheet.PDF>>.

There are no agreed upon statistics regarding the proportion of Australians travelling overseas for the purpose of commercial organ transplantation. An academic literature review conducted for the purpose of this submission demonstrates that while the travel of Australian's overseas for commercial organ transplantation has been identified as an issue, the extent of this practice remains largely unknown.

The most recent data from the Australia and New Zealand Dialysis and Transplant Registry (ANZDATA) reveals that between 2006 and 2015 there have been 55 reported cases of Australian citizens travelling overseas to receive a kidney transplant.⁵ The data does not identify the nature of this travel, or whether these arrangements involved commercial transactions. It is important to observe that there are a number of circumstances where travel overseas for the purpose of organ transplantation may be uncontroversial. For example, in a case where an organ recipient is related to a donor who resides overseas or is a citizen of that country and the donor freely and fully consents to the procedure.⁶

There are significant gaps in knowledge when it comes to identifying the prevalence of both organ trafficking and transplant tourism in an Australian context. This reflects global trends where:

“Scholarly research in this area is not yet well developed and anecdotal reports from civil society organizations and the media remain the primary source of information...”⁷

Clearly there is a need for further research into the prevalence of human organ trafficking in Australia, as well as the rates of Australian citizens and residents who travel overseas for the purpose of organ transplants including whether there has been any illegality. Research documenting the nature and scope of the problem in an Australian context is essential, so that the efficacy of existing policies and legislation can be accurately assessed.

1.3. COMMONWEALTH LEGISLATION

Organ trafficking is a crime under division 271 of the Criminal Code, which sets out offences of trafficking in persons for the purpose of illegal organ removal. Offences under subdivision BA, are outlined in the table below, alongside the jurisdiction relevant to each offence.

⁵.ANZDATA Registry, *39th Annual Report* (2016) ch 8 p 6

<http://www.anzdata.org.au/anzdata/AnzdataReport/39thReport/c08_transplantation_v2.0_20170418.pdf>.

⁶ C. Rudge, R. Matesanz, F. L. Delmonico and J. Chapman, 'International practices of organ donation' (2012) 108, *British Journal of Anaesthesia* 48, 53.

⁷ Joy Ngozi Ezeilo, *Report of the Special Rapporteur on Trafficking in Persons Especially Women and Children*, UN Doc A/68/256 (2 August 2013) 6 [22].

Section	Offence	Jurisdiction
271.7B	<i>Organ trafficking</i> : organising/facilitating the entrance or exit of a person from Australia, and recklessness as to whether that conduct will result in the illegal removal of an organ.	Extended geographical (s15.2)
271.7C	<i>Organ Trafficking (Aggravated)</i> : an aggravated offence for organ trafficking may, for example, involve a victim who is under 18 years of age.	Extended geographical (s15.2)
271.7D	<i>Domestic Organ Trafficking</i> : organising/facilitating/transporting a victim from one place in Australia to another and recklessness as to whether the conduct will result in the illegal removal of an organ.	Applicable to conduct outside of Australia (s271.11)
271.7E	<i>Domestic Organ Trafficking (Aggravated)</i> : may involve, for example, a victim who is under 18 years of age.	Applicable to conduct outside of Australia (s271.11)

Table 1: Summary of Commonwealth offences related to organ trafficking under subdivision BA of the *Criminal Code Act 1995* (Cth), including jurisdiction (2017).

As Table 1 shows, Criminal Code offences cover trafficking in persons for the purpose of organ removal both into and out of Australia, as well as between States and Territories within Australia (domestic organ trafficking). Both offence types refer to recklessness related to this conduct. Illegal organ removal under these provisions refers to circumstances where the removal is contrary to State and Territory law, or where the consent of the victim or their guardian has not been provided.⁸ These provisions do not define consent, although the Explanatory Memorandum for the *Crimes Legislation Amendment (Slavery, slavery-like conditions and people trafficking) Bill 2012* (Cth) clarifies (emphasis added):⁹

‘The ‘consent’ referred to in paragraph 271.7A(b) must be **full and free consent**. Accordingly, the victim or their guardian must not have been coerced or induced – **monetarily or otherwise** – into consenting to the removal of the victim’s organ.’

⁸ *Criminal Code Act 1995* (Cth) s271.7A.

⁹ Explanatory Memorandum, *Crimes Legislation Amendment (Slavery, slavery-like conditions and people trafficking) Bill 2012* (Cth), 42.

In Australia, there has only been one case of organ trafficking under the Criminal Code provisions. In this matter, the prosecution did not proceed due to the death of one of the alleged offenders.¹⁰

CASE STUDY: WOMAN FROM THE PHILIPPINES

An elderly couple, Mr and Mrs Z, travelled to the Philippines with the intention of finding a suitable kidney donor for Mrs Z. They were put into contact with a young woman. An arrangement was made whereby the young woman travelled to Australia with the couple.

Upon arrival in Australia, arrangements were made for the woman to undergo a transplantation surgery. During screening processes conducted at a hospital in Sydney, it was discovered that the woman had not provided free and full consent to the procedure, and had been trafficked to Australia for the purpose of an illegal organ removal.

The couple were investigated for offences relating to the trafficking in persons for the purpose of organ removal. However, following the death of Mrs Z, prosecution of the case was dropped.

1.3.1. Jurisdiction

The former Special Rapporteur, Joy Ngozi Ezeilo addressed the issue of jurisdiction in the following way:

'The legal framework around trafficking persons can also be effectively leveraged to tackle the phenomenon of transplant tourism by extending the jurisdictional reach of national criminal laws.'¹¹

Table 1 illustrates that section 15.2 extended geographical jurisdiction applies to organ trafficking offences under section 271.7B of the Criminal Code.¹² Under section 15.2 of the Criminal Code, extended jurisdiction applies to circumstances where the conduct constituting the offence:

1. Occurs wholly or partly in Australia
2. Occurs wholly outside of Australia and the result of the conduct occurs wholly or partly in Australia
3. Occurs wholly outside of Australia and the alleged offender is a citizen or resident of Australia

¹⁰ Natalie O'Brien, 'Organ trafficker's death closes case', *Sydney Morning Herald* (online), 25 March 2012 <<http://www.smh.com.au/national/organ-traffickers-death-closes-case-20120324-1vqvn.html>>.

¹¹ Joy Ngozi Ezeilo, *Report of the Special Rapporteur on Trafficking in Persons Especially Women and Children*, UN Doc A/68/256 (2 August 2013) 14-5.

¹² *Criminal Code Act 1995* (Cth) ss 271.7B and 271.7C.

Extended jurisdiction under section 15.2 will therefore apply to offences of organ trafficking involving the entry or exit of the victim into or out of Australia.¹³ For this reason, circumstances where an Australian (not the victim) travels overseas for the purpose of transplant tourism or illegal organ transplantation and other related forms of exploitation, are not covered under these provisions.

This suggests that in an Australian context, the issue is not whether extended jurisdiction is necessary in preventing Australians from engaging in organ trafficking and transplant tourism overseas, but rather whether a new provision should be introduced to specifically address this type of conduct.

1.3.2. Comparable Federal offences with an overseas connection

Division 273 of the Criminal Code relates to offences involving child pornography material or child abuse material outside Australia. To be charged under this division, the alleged offender must, at the time of the offence, be an Australian citizen or resident of Australia. The offences contained in this division specifically refer to conduct that occurs overseas, such as 'possessing, controlling, producing, distributing or obtaining child pornography material outside Australia' and a key element of this offence is that 'the conduct referred to... occurs outside Australia'.¹⁴

It is possible that a specific offence addressing conduct by Australian citizens and residents overseas may be appropriate in addressing issues surrounding transplant tourism.

RECOMMENDATION:

To strengthen the existing Criminal Code provisions, Anti-Slavery Australia recommends the introduction of a new offence of 'organ trafficking outside Australia', which would explicitly criminalise certain conduct of Australian citizens or residents overseas.

1.4. STATE AND TERRITORY LEGISLATION

Each Australian State and Territory has legislation regulating the removal of human organs and tissues.¹⁵ Each of these laws contains offences related to transplant tourism and organ removal. For example the *Human Tissue Act 1983* (NSW) ('Human Tissue Act') prohibits trading in tissues, including circumstances where a person enters into a contract or arrangement for valuable consideration for the sale or supply of human

¹³ See *Criminal Code Act 1995* (Cth) s271.10.

¹⁴ *Criminal Code Act*

¹⁵ See the *Human Tissue Act 1983* (NSW); *Human Tissue Act 1982* (Vic); *Transplantation and Anatomy Act 1979* (Qld); *Human Tissue and Transplant Act 1982* (WA); *Transplantation and Anatomy Act 1983* (SA); *Human Tissue Act 1985* (Tas); *Transplantation and Anatomy Act 1978* (ACT); and the *Transplantation and Anatomy Act* (NT).

tissue.¹⁶ The Human Tissue Act defines tissue to include organs.¹⁷ The *Crimes Act 1900* (NSW) contains provisions that extend offences against a law of the State where there is a geographical nexus between the State and the offence. This means, that where an offence is committed wholly or partly in the State, or where the offence is committed wholly outside the State but has an effect in the State, a geographical nexus exists and the offence is extended in those circumstances.

Depending on the circumstances of each case, it is therefore possible that under New South Wales law, a person who travels overseas for the purpose of entering into a contract or arrangement involving payment for human tissues and organs, may be found guilty of an offence under the Human Tissues Act. It should be noted that under the Human Tissues Act, the maximum penalty for trading in tissues is imprisonment for 6 months.

Organ trafficking is severe form of exploitation and a grievous human rights abuse. The criminalisation of payment under State law may assist in addressing the exploitation of donors overseas, however the low penalty for committing this offence, and the narrow circumstances captured (i.e. where there is a contract for payment) do not sufficiently recognise the extreme physical and psychological harm caused by these practices or the complexities of organ trafficking as a crime.

It is integral that a comprehensive assessment of State and Territory legislation is conducted to understand the capacity of these laws to address situations where Australian citizens and residence travel overseas to engage in exploitative practices such as transplant tourism and organ trafficking.

¹⁶ *Human Tissue Act 1983* (NSW) s32(1)(a).

¹⁷ *Human Tissue Act 1983* (NSW) s4.

RECOMMENDATION:

Further research is required to address existing gaps in knowledge on organ trafficking in Australian contexts and should include:

- Research on the prevalence of organ trafficking within Australia;
- Research on the numbers of Australian citizens and residents who receive organs in overseas jurisdictions including:
 - Documented or reported instances where an organ donor was exploited
 - Identification of circumstances where the absence of policies or domestic frameworks led to a risk that an organ donor was exploited.
- Research to evaluate whether existing State and Territory laws on organ transplantation and removal could have extra-territorial application.

2. INTERNATIONAL INSTRUMENTS

Organ trafficking and organ transplant tourism are practices that are fundamentally international in nature. As such, the international community has formed various agreements and frameworks to address the potential for exploitation through illegal or unethical organ transplantation practices. While these instruments attempt to define and address the issue of human organ trafficking worldwide, it is important to recognise that there is no single, accepted definition of ‘human organ trafficking’ used by the international community.

2.1. COUNCIL OF EUROPE CONVENTION AGAINST TRAFFICKING IN HUMAN ORGANS

The Council of Europe *Convention against Trafficking in Human Organs* (‘the Convention’) represents the first international instrument specifically aimed at addressing trafficking in human organs.¹⁸ The Convention asks States to criminalise the intentional removal of human organs from both living and deceased donors in circumstances where the removal is performed without the “free, informed and specific consent of the living donor or deceased donor” or a financial or other advantage is

¹⁸ Alessandra Pietrobon, ‘Challenges in implementing the European Convention against Trafficking in Human Organs’ (2016) 29 *Leiden Journal of International Law* 485, 485.

offered to a person or third party in exchange for the removal of organs.¹⁹ The purpose of organ removal is immaterial for the purpose of this offence. The other offences outlined in the convention are aimed at addressing all actors involved in the trafficking of human organs including those who solicit or recruit donors,²⁰ those who move or transport organs,²¹ those who use illicitly removed organs and medical professionals or others who perform illicit transplant surgeries.²²

Importantly, the Convention does not refer to or prohibit trafficking in persons for the purpose of organ removal.²³ This is instead addressed in the Council of Europe *Convention on Action against Trafficking in Human Beings* ('Convention against Trafficking' which defines exploitation in terms of human trafficking to include the removal of organs.²⁴ The United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* ('the Trafficking Protocol') also defines exploitation in the context of trafficking in persons to include the removal of organs.²⁵

The Convention contains a number of provisions that may be relevant in an Australian context. Article 4 of the convention outlines the circumstances where the removal of human organs would be considered illegal, being circumstances where the removal is performed without free, informed and specific consent, where financial gain or a comparable advantage has been offered for the removal of organs and where a third party has been offered financial gain or a comparable advantage for the removal of organs. Article 10 of the Convention contains provisions relating to jurisdiction, which includes circumstances where the offence is committed within a Party's territory, or by one of its nationals.

To date the Convention has been signed by sixteen Countries, and has been ratified by two countries (Albania and the Republic of Moldova). Commentators have raised concerns that the prosecution of offences outlined in the Convention will result in a lack of consistency and uniformity between jurisdictions due to differences in judicial discretion and interpretation of the laws, for example, judicial decisions regarding the definition of consent.²⁶

While the Convention contains some interesting and relevant provisions that may apply in an Australian context, it is important that the Australian Government consider the best approach to combatting organ trafficking in our region. This will require further

¹⁹ *Council of Europe Convention against Trafficking in Human Organs 2014*, Art 4(1).

²⁰ *Ibid.* Art 7.

²¹ *Ibid.* Art 8.

²² *Ibid.* Arts 5 and 6.

²³ See: *Council of Europe Convention against Trafficking in Human Organs 2014*, Art 4(1).

²⁴ *Council of Europe Convention on Action against Trafficking in Human Beings 2005* reg CETS no 197.

²⁵ *United Nations Convention against Transnational Organized Crime*, GA Res 55/23, UN GAOR, 55th sess, 62nd plen mtg, Agenda item 105, Supp No 49, UN Doc A/RES/55/25 (entered into force 8 January 2001) annex II ('*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*') Art 3 (a).

²⁶ Alessandra Pietrobon, 'Challenges in Implementing the European Convention against Trafficking in Human Organs' (2016) 29 *Leiden Journal of International Law* 485, 493.

research, as noted above, on the nature and prevalence of organ trafficking in Australia and involving Australian citizens and residents who travel overseas.

To ensure an effective response to these issues, we recommend that the Australian Government monitor the progress and implementation of the Convention. Discussed below, this could be done alongside the use of new or existing regional policies and agreements that may be more suitable in addressing organ trafficking from an Australian perspective.

RECOMMENDATION:

Anti-Slavery Australia does not recommend that the Australian Government accede to the *Council of Europe Convention against Trafficking in Human Organs*. Rather, it is our recommendation that the Convention be monitored by the government.

2.2. OTHER RELEVANT INTERNATIONAL INSTRUMENTS

2.2.1. *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*

The *Declaration of Istanbul on Organ Trafficking and Transplant Tourism* ('the Declaration') was endorsed by the Australian National Health and Medical Research Council on 18 February 2011. The Declaration defines the term 'organ trafficking' to be (emphasis added):

"the recruitment, transport, transfer, harboring or receipt of **living or deceased persons or their organs** by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, **for the purpose of exploitation by the removal of organs for transplantation.**"²⁷

This definition of organ trafficking covers both 'trafficking in persons for the purpose of organ removal', as outlined in the Convention against Trafficking and the Trafficking Protocol, and trafficking in human organs as defined by the Convention.

The Declaration differentiates between 'transplant commercialism', 'travel for transplantation' and 'transplant tourism', and in doing so "highlights that not all travel for transplantation is unethical."²⁸

2.2.2. *WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation*

²⁷ The Transplantation Society (TTS) and the International Society of Nephrology (ISN), *Istanbul declaration on organ trafficking and transplant tourism*

²⁸ Melanie O'Brien, 'Problematic provisions: Trafficking in persons for organ removal under Australian Commonwealth criminal law' (2015) 39 *Criminal Law Journal* 101, 103-4.

In 2010, the World Health Assembly resolved to endorse the revised Guiding Principles on Human Cell, Tissue and Organ Transplantation ('WHO Guiding Principles'). This document provides Member States, which includes Australia, with 11 principles "intended to provide an orderly, ethical and acceptable framework for the acquisition and transplantation of human cells, tissues and organs..." The WHO Guiding Principles are designed to apply to both living and deceased donors. Guiding Principle 3 states that (emphasis added):

"Live donations are acceptable when the donor's **informed and voluntary consent** is obtained...they should be acting **willingly, free of any undue influence or coercion.**"²⁹

2.2.3. European Parliament Directive 2010/45/EU

In 2010 the European Parliament adopted Directive 2010/53EU on standards of quality and safety of human organs intended for transplantation ('the Directive'). The Directive provides rules that are aimed at ensuring quality and safety standards for organ transplants conducted in EU countries. The Directive covers organ donation, procurement, preservation, transport and transplantation of organs. The Directive ensures that organs, which can be exchanged between Member States, comply with recognised standards, and attempts to address issues surrounding organ trafficking by improving regulatory frameworks through the traceability of organs.

2.3. THE ROLE OF REGIONAL PARTNERSHIPS AND AGREEMENTS

Australia is a regional leader in addressing issues of human trafficking, slavery and slavery-like practices. In 2016, the Australian Government launched the *International Strategy to Combat Human Trafficking and Slavery* ('the Strategy'). The Strategy is aimed at addressing crimes of human trafficking and slavery in the Indo-Pacific region, setting priorities for regional engagement, leadership and coordination and regional and international cooperation. It is based on the principles that underpin the Australian Government's *National Action Plan to Combat Human Trafficking and Slavery 2015-19*. In doing so, the Strategy highlights a bilateral approach in addressing these issues, particularly through the *Australia-Asia Program to Combat Trafficking in Persons* (AAPTIP) and through collaboration with organisations like the ILO. The Strategy also notes the importance of multi-stakeholder cooperation, as well as key regional mechanisms such as the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*, in combatting human trafficking and slavery in the region. The Bali Process facilitates information sharing, law enforcement and international crime cooperation, aspects that are central to combatting international and transnational crimes.

Like human trafficking and slavery, organ trafficking is a transnational crime involving the extreme exploitation of vulnerable individuals. It therefore important that the

²⁹ *Ibid*

Australian government consider how existing bilateral agreements, and regional mechanisms such as the Bali Process, can be leveraged to combat this crime in our region. This will also assist in the collection of regional data and information that would allow for the enhanced identification of offenders and victims, as well as a research to provide a better profile of these practices in an Australian context. If required, new regional processes and agreements may be modelled off these existing arrangements to ensure that mechanisms are in place to address organ trafficking in our region

RECOMMENDATION:

That new and existing regional processes and agreements be used in addressing the issue of organ trafficking from an Australian perspective.

3. PREVENTATIVE MEASURES

3.1. AWARENESS

The Australian Government, through the national reform agenda on organ and tissue donation and transplantation ('National Reform Agenda'), has demonstrated a commitment to education and awareness programs throughout Australia related to organ transplantation. Noted in the *Australian Government response to the Ernst & Young report: Review of the implementation of the national reform agenda on organ and tissue donation and transplantation*, recent initiatives include funding for an on-line advertising campaign, to improve the prevalence of donor registration in Australia. This is a positive step toward preventing transplant tourism, as research indicates that improved local donation rates can reduce the number of patients seeking transplants overseas.³⁰

It is integral that these education and awareness campaigns also address the issue of transplant tourism directly, by informing the public about the consequences of organ trafficking for both the recipient and the donor. As noted above, a key issue in the identification of organ trafficking is a reluctance from both donors and recipients to self-identify to authorities. For this reason, research should be conducted to identify groups and communities in which there may be a higher prevalence of transplant tourism. Awareness-raising materials should be developed in consultation with communities to ensure efficacy. These materials should provide key information on referral pathways and emergency service providers to communities across Australia. Materials should also highlight the support services available to victims of organ trafficking in Australia. They should include information on how organ trafficking may appear in different forms and outline the offences of organ trafficking under Australian law.

³⁰ Glenn Cohen, 'Transplant Tourism: The Ethics and Regulation of International Markets for Organ' [2013] *Global Health and the Law* 269.

It is essential that these materials be made available in community languages and should be distributed overseas in countries that have been identified as source countries for transplant tourism. These materials should also be made available in rural and regional communities throughout Australia, through local service providers, community centres and various agencies to ensure that rural and regional patients have access to information, services and support.

Anti-Slavery Australia has produced a number of multi-lingual resources related to exploitative practices including forced labour and forced marriage.



Figure 1: “Being exploited at work?” flyer produced in Simplified Chinese.

3.2. EDUCATION AND TRAINING

Anti-Slavery Australia recommends that frontline workers and healthcare professionals receive robust and targeted training on organ trafficking which ensures that indicators of these practices are identified and the appropriate procedures are followed. This would complement existing information and resources available to medical practitioners, such as the Attorney General's Department, *Organ Trafficking – Fact sheet for medical professionals*. Training should include clear outlines of the obligations that medical

professionals have to their patients. This will help clarify the role that healthcare professionals can play in the identification of matters, and assist in the long term collection of data and information for research purposes.

Training should also clearly identify referral pathways. Where relevant, referral pathways may be used by healthcare and other professionals to ensure that potential cases of organ trafficking and transplant tourism are identified and responded to.

One useful resource is Anti-Slavery Australia's eLearning course, an online training program funded by the Australian Government aimed at raising awareness and assisting frontline workers, including community and social workers, health care professionals, government workers and teachers, to assist in the identification of human trafficking and slavery in Australia.

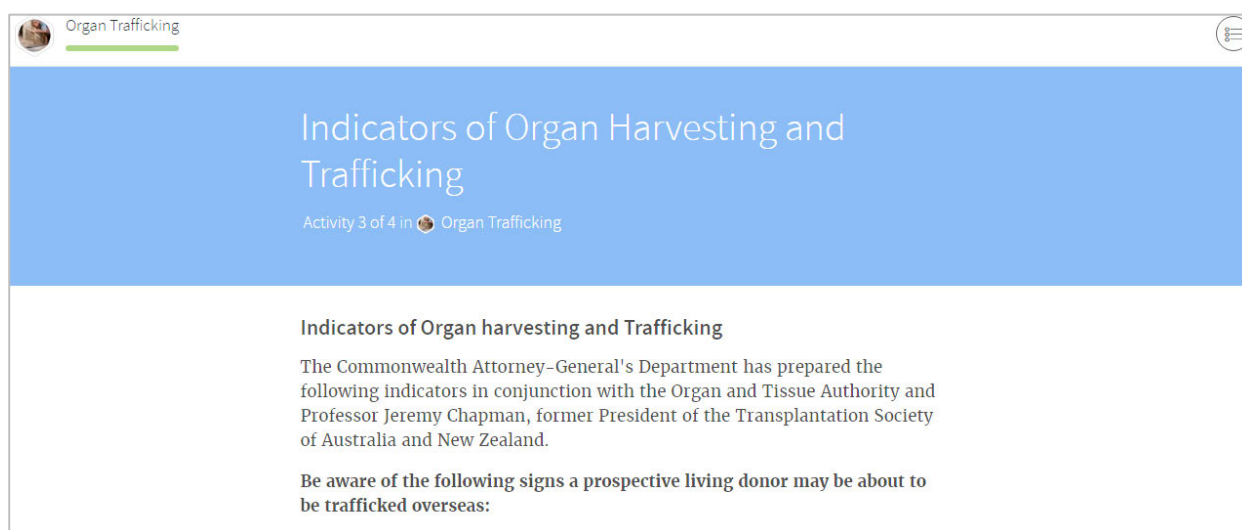


Figure 2: Extract from Anti-Slavery Australia's online eLearning course <www.antislavery.org.au/e-learning>

RECOMMENDATION:

Promotion and strengthening of education, awareness and training:

- To ensure that instances of human organ trafficking are prevented, identified and addressed in Australia; and
- To prevent the exploitation of overseas donors by Australian citizens and residents.